

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.534 of 2017

G.Kamala

... Petitioner

-Vs-

1.The Government of Tamil Nadu,
Rep by the Deputy Secretary to Government,
Transport Department,
Fort St.George, Chennai 600 009.

2.Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Rep by the Managing Director,
No.3/137, Salamedu,
Veludha Reddy Post,
Villupuram 605 602.

3.Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Rep by the General Manager,
Kancheepuram Regional Office,
Karapettai,
Bangalore Highway,
Kancheepuram 631 552.

4.The Commissioner,
Employees Provident Fund,
Regional Office No.20,
Royapettah High Road,
Chennai 600 014.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order dated 26.07.2016 passed in letter No.7487/RW1/2016-3, Transport (RW1) Department on the file of the 1st respondent herein and the impugned order dated 14.07.2016, passed in Lr.No.3776/Sa.Pa.12/TNSTC (V)/KPM/2015 on the file of the 3rd respondent herein and quash the same as they are related to the denial of family pension to this petitioner and direct the respondents to provide reliefs and pay the

amounts due to the petitioner in the light of the judgment dated 04.08.2010 in W.P.(MD).No.3838/2008 and also as per the Madras Liberalized Pension Rules, 1960, in accordance with the order issued in G.O.(Ms).No.189, Transport (RW1) Department, dated 13.08.2004, including the arrears with interest at the rate of 12% per annum payable from 30.01.1994, within the time that may be stipulated by this Court.

For Petitioner : Mr.N.Ishak
For Respondents : Mr.J.Pothiraj,
Special Government Pleader for R1
: Mr.R.Vimal and
: Mr.A.Antony Arokiaraja for RR 2 to 4

O R D E R

Heard Mr.N.Ishak, learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader appearing for the first respondent and Mr.R.Vimal and Mr.A.Antony Arokiaraja, learned counsels appearing for the respondent Nos.2 to 4.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari, to call for the records relating to the impugned order dated 26.07.2016 passed in letter No.7487/RW1/2016-3, Transport (RW1) Department on the file of the 1st respondent herein and the impugned order dated 14.07.2016, passed in Lr.No.3776/Sa.Pa.12/TNSTC (V)/KPM/2015 on the file of the 3rd respondent herein and quash the same as they are related to the denial of family pension to this petitioner and direct the respondents to provide reliefs and pay the amounts due to the petitioner in the light of the judgment dated 04.08.2010 in W.P.(MD).No.3838/2008 and also as per the Madras Liberalized Pension Rules, 1960, in accordance with the order issued in G.O.(Ms).No.189, Transport (RW1) Department, dated 13.08.2004, including the arrears with interest at the rate of 12% per annum payable from 30.01.1994, within the time that may be stipulated by this Court."

3. The case of the petitioner is as follows:-

The petitioner is the wife of late Mr.L.Ganesan, the employee of the respondent Transport Corporation. The petitioner's husband was appointed as Conductor in the erstwhile Tamil Nadu State Transport Department on 31.08.1967 and he was also permanently absorbed in the Tamil Nadu State Transport Corporation with effect from 01.05.1975. After rendering in various units of the Corporation, the petitioner's husband died

while he was in service on 29.01.1994. The petitioner herein being the nominee of her deceased husband, requested the Corporation to sanction family pension payable to her. However, the same was not considered favourably for the following reasons.

4. Originally, certain categories of the staff of the Tamil Nadu State Transport Department including the category of Conductor, was governed by a separate set of non pensionable establishment rules i.e., Tamil Nadu State Transport Department Operation Subordinate Service Rules (hereinafter referred to as OSSR). The employees who were covered under the OSSR, were not entitled for pension benefits under the then Madras Liberalized Pension Rules, 1960. While so, the Government has issued G.O.Ms.No.212, Transport Department, dated 28.03.1974, extending the benefits of pension scheme to the categories of employees who were governed by OSSR. The Government Order was put into effect from 11.01.1974.

5. The Government Order providing for exercise of option by the employees either to remain with OSSR or to be governed by the pension scheme under Madras Liberalized Pension Rules, 1960 and the last date for submission of option was fixed on 30.06.1974. The Government Order further providing that if no such option has been exercised before the stipulated date i.e., 30.06.1974, the pensionary scheme would be made applicable under the Madras Liberalized Pension Scheme.

6. When repeated representations made by the petitioner herein for grant of family pension, the same was not entertained, in view of the administrative delay in addressing the representations of the petitioner and for grant of relief to the petitioner. However, finally, an order was passed on 26.07.2016, by the first respondent and also another order was passed by the third respondent on 14.07.2016, rejecting the claim of the petitioner. The claim of the petitioner was rejected by the impugned communications by the respondents concerned only on the ground that the petitioner's husband was an OSSR optee and therefore, the petitioner's request for grant of family pension, cannot be considered. The petitioner is before this Court, challenging the orders of rejection by the authorities.

7. Upon notice, learned Special Government Pleader appearing for the first respondent and the learned counsel appearing for the second to fourth respondents, entered appearance and filed a detailed counter affidavit.

8. In the counter affidavit, the claim of the petitioner is sought to be resisted on the following averments as contained in paragraph Nos.5 and 6, are reproduced hereunder:-

"5. It is submitted that, as per the G.O.Ms.No.212, Transport Department, dated 28.03.1974, TNSTD employees were called on to exercise their option to come under MLPR (Madras Liberalized Pension Rules) 1960 for pension or settlement of Gratuity under OSSR with double share of PF amount, forgiving pensioning benefits. The last date, for exercising the option was extended up to 31.12.1974 in the Government's memo No.28149/A1/74-2, Transport Department, dated 12.12.1974 and such of those employees who did not opt their willingness would have automatically been come under the MLPR'1960 scheme.

6. It is submitted that, all facts of pension scheme knowing well, the petitioner's husband had given his consent letter with signature on 19.12.1974 for the settlement under OSSR and the same is pasted in his Government Service Book, considering his option, he has been sanctioned OSSR gratuity vide Govt. letter No.38284/TB05/87, dated 17.10.1988."

9. According to the learned counsel for the respondents, since the petitioner's husband had exercised his option to remain with OSSR by his consent letter dated 19.12.1974, the question of grant of family pension to the petitioner did not arise and therefore, the claim of the petitioner was rightly rejected by the authorities. The learned counsel would further submit that originally the G.O.Ms.No.212, Transport Department, dated 28.03.1974, fixed the cut off date for exercising option as 30.06.1974, but, subsequently by memo dated 12.12.1974, the date was extended till 31.12.1974 and by which date, the petitioner's husband had exercised his option to remain with OSSR by his consent letter dated 19.12.1974. Therefore, he would submit that the petitioner is not entitled to the relief prayed for in the writ petition and requested this Court to reject the writ petition.

10. On the other hand, the learned counsel for the petitioner would submit that the issue is directly covered by the decision of this Court, rendered in W.P(MD).No.3838 of 2008, W.P(MD).No.6501 of 2008 and W.P(MD) No.6528 of 2008, dated 04.08.2010. In these writ petitions, the learned Judge

considered the similar claim and passed a common order by considering the effect of G.O.Ms.No.212, Transport Department, dated 28.03.1974. The learned Judge after perusing the service record of those petitioners, had come to the conclusion that the option exercised by those petitioners were after the cut off date i.e., 30.06.1974. Therefore, the same cannot be a valid exercise of option and allowed the writ petition and directed to provide pensionary benefits to the petitioners therein under Madras Liberalized Pension Rules, 1960. As far as the objection raised by the respondents in the counter affidavit that the cut off date as 30.06.1974 has been extended till 31.12.1974, by memo of the Transport Department dated 12.12.1974, the learned counsel for the petitioner would also submit that it was merely a letter of the Transport Department and only a suggestion was made for the extension of cut off date till 31.12.1974. Such letter cannot supersede the cut off date prescribed by G.O.Ms.No.212, Transport Department, dated 28.03.1974 .

11. There appears to be some considerable force in the contention put forth by the learned counsel for the petitioner that the so called extension of the cut off date till 31.12.1974, cannot be a valid extension, since, the G.O.Ms.No.212, Transport Department, dated 28.03.1974, provides for cut off date only on 30.06.1974. The operative portion of the Government Order in regard to the prescription of the Government Order in paragraph No.6, is extracted below:-

"6. However, to ensure that all existing employees given the option to continue to be governed by the existing terms and conditions, if for some reason, they choose to do so, Government direct that all the employees covered in paragraph 3(a) (c) of this order will have the option to request to be governed by the existing terms and conditions of service. This option will be exercised on or before 30.06.1974. Those who do not exercise any option shall automatically come under the Liberalized Pension Rules, 1960. Option cannot be exercised after 30.06.1974 and option once exercised is final."

Once the cut off date is prescribed in Government Order itself, such cut off date cannot be altered or changed by a casual communication or letter issued by the Transport Department. Therefore, this Court has taken the original cut off date prescribed in the Government Order as valid for all purposes and there was no valid extension of the said cut off date.

12. While holding so, as rightly contended by the learned counsel for the petitioner that the issue is directly covered by the aforesaid decision of the learned single Judge of this Court. In this case, admittedly, the option was exercised by the deceased employee viz., the husband of the petitioner, only on 19.12.1974, which is obviously after the cut off date prescribed in the Government Order i.e., 30.06.1974. Therefore, such option exercised by the petitioner cannot be a valid exercise of option in terms of the G.O.Ms.No. 212, Transport Department, dated 28.03.1974 . Such being the case, the impugned orders passed by the respondents in rejecting the claim of the petitioner on the ground of exercise of option by the petitioner's husband cannot be countenanced both in law and on facts. Once the option exercised by the deceased employee, the husband of the petitioner, as held to be invalid, the employee would be governed by the Madras Liberalized Pension Rules, 1960 and in which case, the petitioner is entitled to the family pension admissible to her. It is not in dispute that the family members of the deceased Transport Corporation employee, are entitled to family pension, as such entitlement has been a settled legal position and there is no dispute regarding the said entitlement.

13. In view of the above conclusion, this Court is of the considered view that the petitioner has made out a clear case for grant of relief. The respondents are directed to sanction family pension to the petitioner from the date of death of her husband and pay the arrears of family pension to the petitioner and continue to pay monthly pension as revised from time to time. In case, the deceased employee had been settled with the non-pensionable service benefits at the time of his death and the same may be adjusted while disbursing arrears of family pension payable to the petitioner. Since the petitioner's husband has died while in service as early as in 1994 and the family pension has been unduly denied for more than twenty years, the petitioner is also entitled to simple interest at the rate of 12% percent from the date it became payable till the date of actual payment.

14. In view of the above conclusion, the impugned order dated 26.07.2016 passed in letter No.7487/RW1/2016-3, Transport (RW1) Department on the file of the 1st respondent and the impugned order dated 14.07.2016, passed in Lr.No.3776/Sa.Pa.12/TNSTC (V)/KPM/2015 on the file of the 3rd respondent, are set aside. The respondents or the competent authorities are directed to comply with the direction passed by this Court, within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gsk

To

- 1.The Deputy Secretary to Government,
The Government of Tamil Nadu,
Transport Department,
Fort St.George, Chennai 600 009.
- 2.The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
No.3/137, Salamedu,
Veludha Reddy Post,
Villupuram 605 602. W.P.No.534 of 2017
- 3.The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Kancheepuram Regional Office,
Karapettai,
Bangalore Highway,
Kancheepuram 631 552.
- 4.The Commissioner,
Employees Provident Fund,
Regional Office No.20,
Royapettah High Road,
Chennai 600 014.

+1cc to Mr.N.ISHAK, Advocate, S.R.No. 30202

W.P.No.534 of 2017

RK(CO)
TR(09/05/2018)